

REMARKS

Reconsideration and withdrawal of the rejection with respect to Claims 22, 23, 25-32, 34-39, and 54-63 is respectfully requested in view of the foregoing amendments, the following remarks and the two Rule 132 Declarations enclosed herewith.

The rejection of the claims as set forth in paragraphs 2 of the Office Action as being unpatentable over Rowe in view of Evans, or in paragraph 4 in further view of Carlesimo is respectfully traversed. Applicant would direct the Examiner's attention to the passage in Rowe at column 1, lines 51 to 54 where Rowe states:

"Rigidly welding the entrance fitting to the chamber wall is not an ideal arrangement since ground shifting often occurs which could rupture the weld or the pipe."

It is clear from this passage, and from the whole disclosure which follows, that Rowe clearly considers this potential problem of weld rupture as such a problem that he dismisses the teaching of Evans and instead chooses a much more complex and expensive arrangement of designing an additional and extra seal, or leak testable bulkhead, around the conventional gasket seal arrangement. This, in itself, illustrates a widely held prejudice by those working in this technical field against welding a fitting directly to a chamber wall, as presently claimed.

This is supported by the enclosed Declarations of James Thompson, an independent consultant retained by the Assignee Petro Technik Ltd. from time to time and from John Boudry, one of the inventors. Both declarations are unsigned, but signed copies of the same will be submitted shortly. Mr. Thompson an expert in this field, describes in detail the problems associated with conventional underground polyethylene piping systems and the reasons why no one had used the fusion welding system for entry fittings for use in the petroleum industry prior to the current invention (note ¶'s 3-5). Thompson also specifically discusses the teachings and shortcomings of Rowe and why Rowe teaches away from the current invention, (e.g., ¶'s 10-14). Similarly, the Declaration of John Boudry also addresses Rowe and why it does not suggest the presently claimed invention (see ¶'s 4-11).

Furthermore, the rejection of the claims as being obvious over Gavin in view of Evans is also respectfully traversed. It should be pointed out that the plastic boxes described by Gavin are designed to be set into the ground at ground level. That is to say, the top of the box is set level with the ground surface. Hence the grate cover 110 or the concrete cover 111.

It is clear that these structures, and their associated seals, were never intended to be buried far below ground level and subsequently covered in their entirety by backfill topped with a concrete apron, as one would find in a gas station forecourt situation, as in the present invention. Fittings of the present invention used well below ground level are subjected to much greater stresses and shearing forces than

the fittings described by Gavin. This ground shifting is also referred to in Rowe at column 1, lines 51 to 53 and it is clear that the forces created during such ground shifting are able to rupture either the weld between the entrance fitting and the chamber wall or to rupture the pipe.

By this amendment, the independent claims have been amended to further distinguish the claimed invention over Evans by defining a subterranean chamber wall, support for which can be found at pg. 8, lines 18-19.

Furthermore, the internal frustoconical sealing arrangement of Gavin would be entirely unsuitable to the present application, so much so that Gavin cannot be considered as a suitable starting point for the present invention. This issue is specifically dealt with in both of the Declarations attached herewith. In particular, Thompson discusses Gavin and why the seals therein which relate to the waste water industry are unsuitable and ineffective in the petroleum industry (§'s 5-9). Boudry also points out the deficiencies in Gavin and Evans (§'s 12-15).

Boudry also points out in §16 of his Declaration why despite the fact that electrofusion techniques were known in the industry for many years, electrofusion fittings of the type contemplated were not considered by those in the industry. Specifically that the chambers and sumps were typically formed by rotor molding and were formed from low density polyethylene whereas the fittings were formed by extrusion or injection molding and were formed by high density polyethylene. As Boudry points out, the traditional view has been that it was not possible to form a

satisfactory electrofusion seal between an item of low density and an item of high density polyethylene and, as a result, one skilled in the field would not have considered that such an electrofusion technique would result in an effective seal. The inventors unexpectedly proved that this long held theory was simply wrong.

Finally, it should be noted that the Boudry declaration (§'s 13-15) also responds to the new arguments made by the Examiner in paragraph 5 of the Office Action.

As can be appreciated from the foregoing, and as confirmed by the Declarations of Boudry and Thompson, one of ordinary skill in the art in the petroleum industry would not rely on Rowe which, in fact, teaches against the present invention, nor on the disparate and non-analogous teachings of Gavin which relates to septic tank systems and Carlismo which relates to an underground sewer installation, as this ignores the reality of the state of the art in the petroleum industry. As the Examiner well knows:

"It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one skilled in the art."

Baush & Lomb Inc. v. Barnes-Hind/Hydrocurve Inc., 230 USPQ 416 (Fed. Cir. 1986) citing, *In re Wesslau*, 353 F. 2d 238, 241, 147 USPQ 391, 393 (CCPA 1965); see also *In re Mercer*, 515 F. 2d 1161, 1165-66, 185 USPQ 774, 778 (CCPA 1975).

Indeed, it is only through hindsight analysis that can such a distorted reconstruction of the prior art be made and this is, of course, patently improper. Accordingly, it is

respectfully submitted that the 103 rejection of the claims is improper and should be withdrawn and allowance of the claims at an early date is earnestly solicited.

Applicant hereby requests a three month extension of time in which to respond to the outstanding Office Action. Credit Card payment form no. PTO-2038 in the amount of \$525.00 is enclosed . Any fee deficiency or overpayment may be charged or credited to Deposit Account No.50-3990.

Finally, Applicant hereby requests a personal interview with the Examiner to discuss this case before a further Office Action is issued. Applicant's attorney would like to arrange for this interview during December and will telephone the Examiner to see if a suitable date and time can be arranged at such time.

In light of the foregoing, reconsideration and withdrawal of the rejection and allowance of the claims at an early date is earnestly solicited.

Respectfully submitted,

WRIGHT, ET AL.



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Enclosures: Declaration of John A. Boudry w/Exh. A1 and A2
Declaration of James Thompson
USPTO Form 2038 in the amount of \$525
Postcard

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